



**IT IS ORDERED as set forth below:**

**Date: February 23, 2011**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:	:	CASE NUMBER
	:	
<b>GIUSEPPE COSCARELLI,</b>	:	11-51097-MGD
	:	
Debtor.	:	CHAPTER 13
	:	
<b>CLASSIC CADILLAC ATLANTA</b>	:	
<b>CORP.,</b>	:	
	:	
Movant,	:	
	:	
v.	:	CONTESTED MATTER
	:	
<b>GIUSEPPE COSCARELLI,</b>	:	
	:	
Respondent.	:	
	:	

**ORDER DENYING CLASSIC CADILLAC ATLANTA CORP.'S MOTION  
TO DISMISS WITH PREJUDICE AND MODIFYING THE AUTOMATIC STAY**

Before the Court is Classic Cadillac Atlanta Corp.'s ("Cadillac") Motion to Dismiss with Prejudice ("Motion") and Giuseppe Coscarelli's ("Debtor") response thereto. (Docket Nos. 12 & 18). Cadillac's Motion for an Expedited Hearing was granted, and the matter came on for hearing

on February 23, 2011. (Docket Nos. 13, 15 & 16). Present at the hearing were counsel for Debtor, Soo Hong of Rickman & Blevins, P.C., counsel for Cadillac, Nicholas Roecker of Smith, Gambrell & Russell, LLP, and Albert Guthrie, counsel for Chapter 13 Trustee Mary Ida Townson. The Court heard argument from counsel and denied Cadillac's motion for dismissal with prejudice but ordered modification of the automatic stay for the limited purpose of allowing Cadillac to pursue its state court action against Debtor to judgment.

Cadillac seeks dismissal of Debtor's Chapter 13 and a bar on Debtor's ability to refile under title 11 for 180 days. Cadillac asserts that Debtor's bankruptcy history, which includes a total of three cases filed since September 2009, demonstrates bad faith by Debtor and an intention to disrupt the pending state court litigation between the parties. Debtor asserts that his filing history does not evidence bad faith. Instead, Debtor asserts his circumstances have materially changed, which justifies each filing.

Debtor's first Chapter 13 case was filed on September 11, 2009, Case No. 09-83908-MGD, and dismissed on November 12, 2009 based on Debtor's ineligibility as provided by 11 U.S.C. § 109(e)'s debt limitations. The hearing in the pending state court litigation on Cadillac's summary judgment motion was scheduled for September 14, 2009 was stayed with Debtor's first filing. Debtor filed his second Chapter 13 case on May 9, 2010, Case No. 10-73887-MGD, and this case was dismissed at the July 23, 2010 confirmation hearing based on Debtor's failure to fund the proposed Chapter 13 plan. Cadillac points out that Debtor's second Chapter 13 case was filed one day before the rescheduled summary judgment hearing in the pending state court action. Again, the state court proceeding was stayed during the pendency of the bankruptcy case. Debtor explains that Debtor lost his job in July of 2010, which prevented Debtor from making the plan payments.

Additionally, Debtor notes that the proposed plan provided a 100% dividend to unsecured creditors, including Cadillac's claim of \$188,650.50. The above-styled case was filed on January 9, 2011. The state court action had a scheduled hearing for January 10, 2011. Debtor is now employed again and has proposed a plan providing a pool for unsecured creditors of more than \$67,000. The state court hearing has been rescheduled for March 1, 2011.

Debtor's filing history and the timing of each petition appears to be linked in some way to the pending state court litigation between the parties. Debtor's behavior has prejudiced Cadillac's prosecution of the state court action, although it is unclear whether Cadillac's potential recovery has been limited by Debtor's bankruptcy filings. The proposed Chapter 13 plan in the above-styled case provides Cadillac with some protection, as it provides for a distribution to unsecured creditors.

Cadillac's requested remedy of dismissal with prejudice is not warranted under these facts. Debtor's change in circumstances refute Cadillac's bad faith allegations. Based on the arguments by counsel, Debtor's change in circumstances, and that the proposed Chapter 13 plan treats Cadillac's claim, the most appropriate remedy is a modification of the automatic stay to allow Cadillac to proceed with the state court action. Maintaining Debtor's right to reorganize his personal debts and confirm a plan to potentially discharge liabilities, while permitting Cadillac to prosecute the pending state court action to judgment, balances the parties' interest in this case. Accordingly, it is

**ORDERED** that Cadillac's Motion is **DENIED**.

It is **FURTHER ORDERED** that the automatic stay is hereby modified to allow the parties to proceed with the pending Cobb County State Court action, Civil Action File No. 09A-199-4. Cadillac is permitted to litigate the pending action to judgment. This modification of the automatic

stay does not permit Cadillac to record or otherwise execute on any judgment without first attaining further relief from this Court. The Clerk is directed to serve the Debtor, Debtor's counsel, Cadillac, Cadillac's counsel, and the Chapter 13 Trustee.

**END OF DOCUMENT**